

Appeal from a decision of the Montana State Office, Bureau of Land Management, finding oil and gas lease M 56256 to have terminated and partial relinquishment of that lease to be unacceptable.

Reversed.

1. Oil and Gas Leases: Relinquishment

Where the anniversary date of an oil and gas lease falls on a day when the proper office for payment is not open, a partial rental payment together with a partial relinquishment personally delivered to the proper state office on the next official working day serves to extend that part of the lease covered by the rental payment. A BLM decision finding such a lease to have terminated for failure to pay the full amount of the rental must be reversed.

APPEARANCES: Monty Cranston, president, Monty Cranston, Inc., Billings, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Effective July 1, 1983, noncompetitive oil and gas lease M 56256 issued to Monty Cranston, Inc., for 9,764.005 acres of land in Sanders County, Montana. Rental in the amount of \$ 9,765 was due July 1, 1984, a Sunday. On Monday, July 2, 1984, Monty Cranston, president of Monty Cranston, Inc. (Cranston), personally delivered to the Montana State Office, Bureau of Land Management (BLM), a partial rental payment in the amount of \$ 1,920 and a partial relinquishment, identifying 7,845.005 acres in lease W 56256.

On July 31, 1984, BLM issued a decision finding that although Cranston's partial rental payment was timely, the lease terminated automatically for failure to pay rental for the entire lease. BLM's rationale was that rental was required for the entire lease because the effective date of the partial relinquishment was July 2, 1984, which was after the anniversary date of the lease. It stated that the partial relinquishment could not be processed because the lease terminated.

BLM drew a distinction between documents required by law to be filed and documents permitted to be filed. It stated that 43 CFR 1821.2-2(e) governs the filing of required documents. <sup>1/</sup> Regarding the relinquishment, BLM stated:

Regulation 43 CFR 1821.2-2(d) governs the filing date of the relinquishment which is a permitted document which the lessee elects to file. That regulation provides the following:

Any document required or permitted to be filed under the regulations of this chapter, which is received in the proper office, either in the mail or by personal delivery when the office is not open to the public, shall be deemed to be filed as of the day and hour the office next opens to the public. [Emphasis in original.]

BLM offered Cranston reinstatement of the lease at a higher rental and royalty rate (class II reinstatement). <sup>2/</sup>

Cranston seeks review of BLM's decision, claiming that BLM erred in failing to process the partial relinquishment and in finding his lease to have terminated. Cranston argues that BLM has misapplied the regulations to deprive him of his lease. He contends that he should not have to submit to class II reinstatement. Reversal of the BLM decision is requested.

The regulation relating to oil and gas lease termination, 43 CFR 3108.2-1(a), provides that if the anniversary date of a lease falls on a day when the proper BLM office is closed, payment received the next day the office is open will be considered timely filed. See 30 U.S.C. § 188(b) (1982). Thus, a lease terminates automatically by operation of law upon the failure of the lessee to pay rental on or before the anniversary date or the first official working day thereafter. Anthony F. Hovey, 79 IBLA 148, 151 (1984). There is no question, and BLM admits, that payment in this case was timely. BLM found, however, that Cranston should have submitted rental for the entire lease.

[1] The BLM decision is in error and must be reversed. There is no valid reason for refusing to process the partial relinquishment in this case. BLM's distinction between documents required to be filed and those permitted to be filed is not supported by the regulations cited by BLM. The regulation quoted by BLM, 43 CFR 1821.2-2(d), as governing the filing of permitted documents, not only refers to documents permitted to be filed but also to documents

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<sup>1/</sup> That regulation states:

"Any document required by law, regulation, or decision to be filed within a stated period, the last day of which falls on a day the office is officially closed, shall be deemed to be timely filed if it is received in the proper office on the next day the office is open to the public."

<sup>2/</sup> Class II reinstatements are presently governed by 43 CFR 3108.2-3.

required to be filed. Likewise, that regulation relates to filings made when the BLM office is not open to the public. The regulation provides that in those circumstances both documents required to be filed and those permitted to be filed are deemed filed as of the day and hour the office next opens for business. That regulation has no bearing on this case. In this case, Cranston personally delivered the partial rental payment and partial relinquishment to the BLM office during business hours. The partial relinquishment shows that it was time and date stamped by BLM at 2:47 p.m. on July 2, 1984. In accordance with 43 CFR 3108.1, the relinquishment took effect on the date it was filed, July 2. At that time the lease had not terminated because, although the lease anniversary date was July 1, the statute and regulations allowed timely payment to be made on July 2. See 30 U.S.C. § 188(b) (1982) and 43 CFR 3108.2-1(a). The timely submission of a partial payment together with a partial relinquishment covering the remaining land in M 56256 served to extend that part of the lease covered by the rental payment. 3/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded for action consistent herewith.

Bruce R. Harris Administrative Judge

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We concur:

James L. Burski  
Administrative Judge

Edward W. Stuebing  
Administrative Judge.

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3/ This case is distinguishable from James and Lillian Chudnow, 86 IBLA 315 (1985), in which rental for an oil and gas lease was due on June 1. The Chudnows placed a partial relinquishment and a partial rental payment in the mail on May 31. BLM received them on June 5. The relinquishment was ineffective because the lease had already terminated on June 1 for failure to pay rental. Herein, on the other hand, the relinquishment was received prior to lease termination.

